

**Whosoever Will Community Church of Christ v
Beebe**

2019 NY Slip Op 33139(U)

October 18, 2019

Supreme Court, New York County

Docket Number: 158441/2018

Judge: Debra A. James

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DEBRA A. JAMES PART IAS MOTION 59EFM

Justice

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INDEX NO. 158441/2018

WHOSOEVER WILL COMMUNITY CHURCH OF CHRIST,

MOTION DATE 06/07/2019

Plaintiff,

MOTION SEQ. NO. 002

- v -

CATHERINE JOHNSON BEEBE and SHILOH KINGDOM
DELIVERANCE INTERNATIONAL MINISTRIES

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 11, 12, 13, 14, 15
were read on this motion to/for JUDGMENT - DEFAULT

Upon the foregoing documents,

In this action to void a deed, plaintiff WHOSOEVER WILL
COMMUNITY CHURCH OF CHRIST moves for a default judgment based
upon the failure of defendants CATHERINE JOHNSON BEEBE and
SHILOH KINGDOM DELIVERANCE INTERNATIONAL MINISTRIES to answer or
appear. Plaintiff has submitted proof of service of the summons
and complaint and proof of service of this motion upon defendant
SHILOH KINGDOM DELIVERANCE INTERNATIONAL MINISTRIES. Plaintiff
has also submitted an affirmation as to defendant's default
pursuant to CPLR 3215 (f).

However, the motion must be denied because the plaintiff
has not submitted an affidavit of facts in support of the motion
pursuant to CPLR 3215 (f), but instead has submitted only an

affirmation which is insufficient to support the entry of a default judgment. Nor has the plaintiff included in its moving papers a copy of a sufficiently verified complaint that pursuant to CPLR 3215 (f) could act as an affidavit of facts. See Mullins v DiLorenzo, 199 AD2d 218, 219-220 (1st Dept 1993) ("This Court has held that a complaint verified by counsel amounts to no more than an attorney's affidavit and is therefore insufficient to support entry of judgment pursuant to CPLR 3215. In the absence of either a verified complaint or an affidavit by the party, the entry of judgment by default is erroneous and deemed a nullity." [citations omitted]; Georgia Pacific Corp. v Bailey, 77 AD2d 682 (3d Dept 1980).

In addition, plaintiff has not submitted proof of the additional mailing of the summons required by CPLR 3215 (g) (4) upon the corporate defendant SHILOH KINGDOM DELIVERANCE INTERNATIONAL MINISTRIES.

CPLR 3215 (g) (4) (i) states that "[w]hen a default judgment based upon non-appearance is sought against a domestic or authorized foreign corporation which has been served pursuant to paragraph (b) of section three hundred six of the business corporation law, an affidavit shall be submitted that an additional service of the summons by first class mail has been made upon the defendant corporation at its last known address at least twenty days before the entry of judgment." The rule is

that "[a] default judgment may not be granted against a non-appearing corporate defendant without proof of compliance with the additional service requirement set forth in CPLR § 3215(g) (4) (i)." Carus & Manniello, P.C. v MLG Capital Assets LLC., 2003 NY Slip Op 50598(U), 2003 WL 1093402 (City Ct, White Plains, March 4, 2003) citing Rafa Enterprises, Inc. v Pigand Management Corp., 184 AD2d 329, 330 (1st Dept 1992) ("moving papers were deficient, having failed to set forth an affidavit of service by mail upon the last known address of the corporation, as required pursuant to CPLR 3215 (f) (4) (i)"). See, D & D Asphalt Construction Corp v Corealty, LLC, 296 AD2d 432 (2nd Dept 2002).

Finally, as to the individual defendant CATHERINE JOHNSON BEEBE there is no proof of service of the summons and complaint filed or attached to the motion as required by CPLR 3215 (f).

Accordingly, it is

ORDERED that plaintiff's motion for a default judgment is DENIED WITHOUT PREJUDICE to move again upon proper proofs in accordance with the foregoing; and it is further

ORDERED that the parties are hereby directed to attend a preliminary conference on January 28, 2020, at 9:30 A.M., at the

Courthouse, IAS Part 59, Room 331, 60 Centre Street, New York,
New York.

OCT 18 2019

DATE

Debra A. James

DEBRA A. JAMES, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE